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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,414	10/28/2003	John G. Robertson	RBI-022	7254
959 7590 01/25/2007 LAHIVE & COCKFIELD, LLP ONE POST OFFICE SQUARE BOSTON, MA 02109-2127			EXAMINER SAMALA, JAGADISHWAR RAO	
			ART UNIT	PAPER NUMBER
			1618	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/696,414	Applicant(s) ROBERTSON, JOHN G.	
	Examiner Jagadishwar R. Samala	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/02/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Application Status

1. Applicant's response to the Office Action mailed on October 28, 2003 is acknowledged.

Claims Disposition

2. Claims 1-13 are pending and are under examination.

Information Disclosure Statement

3. The Information Disclosure Statement filed on September 02, 2004 has been received and entered. The references cited on the PTO-1449 Form have been considered by the examiner and a copy is attached to the instant Office action.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Screening patients is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure, for e.g. patient. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). For instance, subject suffering from sever cold, stuffy nose, consequently leads to desensitized their olfactory systems and as a result, they will be not in a position /condition to detect an apparent odor of said volatile sulfur compounds. In accordance with the above-mentioned objectives, a method of detecting and indicating the presence of odor of said

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halitosis associated compound to said subject is indicative of halitosis in said subject is not very appropriate. Only organoleptic tests relying on human olfactory senses are however, ineffectual for detecting and/or quantitatively diagnosing the seriousness of halitosis. Practicing the invention (i.e., detecting halitosis) to a subject without malfunctions of olfactory systems as mentioned above would produce scientific evidential support to this invention and more particularly, to a halitosis detector device capable of easily and conveniently detecting human halitosis.

Allowable Subject Matter

3. Claims 1-13 are free of prior art since, in the instant case the a method of detecting halitosis in a subject, allowing the subject to smell halitosis associated compounds present in a reservoir to detect an apparent odor, whereby the lack of an apparent odor to subject is indicative of halitosis. In the closest prior art Marx, Ivan (EP 0 819 940 A3) discloses a method of detecting halitosis, the method comprising: bringing a person's breath into contact with a detection agent by having the person blow or breath into a gas detector containing a detection agent to detect halitosis (a visible colour change of the detection agent to indicate whether or not a person has halitosis). Claims 1-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

No New matter should be introduced to overcome this rejections(s) under U.S.C. 112 1st paragraph, set forth in this Office action.

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Conclusion

4. No claims are allowed.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VICKIE KIM
PRIMARY EXAMINER


Jagadishwar R Samala
Examiner
Art Unit 1618

sjr